

EQUALITY IMPACT ASSESSMENT

Title of policy/ practice/ strategy/ legislation etc.	The Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019
Minister	Ash Denham, Minister for Community Safety
Lead official	Simon Stockwell
Directorate: Division: Team	Civil Law Division, Justice Directorate
Is this new policy or revision to an existing policy?	<p>It is a new policy.</p> <p>The Scottish Government believes that staying in the EU is the best option for the whole of the UK and Scotland. The Scottish Government's preferred option is another referendum which includes the choice to remain in the EU. Failing that, the Scottish Government supports a compromise option: continued membership of the European Single Market and Customs Union. However, if the UK leaves the EU without a deal, the Scottish Government needs to take appropriate action, such as this SSI.</p>

Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	This is not what this SSI is about.
Advancing equality of opportunity		X		<p>The response by Together (the Scottish Alliance for Children’s Rights) https://www.togetherscotland.org.uk/media/1113/brexit_family_law_05-09-2018.pdf to the Scottish Government consultation in 2018 on family and civil law and Brexit noted that:</p> <p>“In summary, children’s human rights are being increasingly embedded into EU family law. This is helping to ensure that their rights are protected, respected and fulfilled. Together would welcome EU family law continuing to apply after the transition period, with an agreement with the EU to ensure full reciprocity, so that children can continue to benefit from these protections.”</p> <p>The Scottish Government agrees with this assessment. Ideally, full reciprocity with the EU on family law would continue.</p>

Age	Positive	Negative	None	Reasons for your decision
				<p>As Together also noted in their consultation response, the re-cast of Brussels IIa, due to come into force in 2022, will further enhance how the voice of the child is heard.</p> <p>The Scottish Government is taking steps to improve how the voice of the child is heard in family cases. These steps, examples of which are outlined below, are being taken regardless of Brexit.</p> <p>The Scottish Government's Programme for Government 2018/19 https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/ said that the Scottish Government will incorporate the principles of the UN Convention on the Rights of the Child into domestic law.</p> <p>Programme for Government also confirmed that the Scottish Government will introduce a Family Law Bill to:</p> <ul style="list-style-type: none"> • ensure that the child's best interests are at the centre of any contact or residence case or Children's Hearing; • ensure that the voice of the child is heard; and • ensure that cases and hearings are dealt with in an efficient way.

Age	Positive	Negative	None	Reasons for your decision
				<p>The Scottish Government sent a policy paper to the Family Law Committee of the Scottish Civil Justice Council on hearing the voice of the child in family cases: http://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/flc-meeting-files/flc-07-december-2015-meeting-papers/paper-5-1a-hearing-the-voice-of-the-child-in-family-cases---sg-paper.pdf?sfvrsn=2 This policy paper has led to the Committee preparing changes to the F9 form (used by the courts to obtain the voice of the child in contact and residence cases) to make it more child-friendly.</p>
Promoting good relations among and between different age groups			X	This is not what this SSI is about.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	There is no obvious impact on disabled people.
Advancing equality of opportunity			X	There is no obvious impact on disabled people.
Promoting good relations among and between disabled and non-disabled people			X	There is no obvious impact on disabled people.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about.
Advancing equality of opportunity			X	<p>This is not what this SSI is about.</p> <p>Generally, the Scottish Government is aware that in some family areas more women than men raise family cases and in other areas more men than women raise cases.</p> <p>For example, in Scotland in 2016, out of 8,511 divorces granted, 4,784 had a female pursuer (56%) and 3,727 had a male pursuer (44%).</p> <p>In relation to child contact cases, the pursuer is more likely to be male than female.</p>
Promoting good relations between men and women			X	This is not what this SSI is about.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about.
Advancing equality of opportunity			X	This is not what this SSI is about. Clearly, though, as indicated elsewhere, family cases often relate to children.
Promoting good relations			X	This is not what this SSI is about.

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about.
Advancing equality of opportunity			X	This is not what this SSI is about.
Promoting good relations			X	This is not what this SSI is about.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about
Advancing equality of opportunity			X	<p>This is not what this SSI is about. However, in preparing this SSI, the Scottish Government has taken account of its aim of equality of treatment, where possible, between mixed sex and same sex relationships.</p> <p>The general view is that Brussels IIa does not extend to same sex relationships, given the mixed views in EU Member States on the legal recognition of same sex relationships. As a result, when civil partnership and then same sex marriage were introduced in Scotland, domestic provision was made to mirror, so far as possible, the provisions of Brussels IIa. This domestic provision made specific reference to the Brussels IIa Regulation. As a result, this instrument has to make changes as well to this domestic legislation in the event of the UK leaving the EU without a negotiated settlement.</p>

Sexual orientation	Positive	Negative	None	Reasons for your decision
				<p>In particular, provision is made so that the Scottish courts have jurisdiction to hear actions for divorce and judicial separation in relation to same sex marriage and dissolution and separation of civil partnership if either of the parties is domiciled in Scotland on the date when court proceedings are begun or was habitually resident in Scotland throughout the period of one year ending on the date when the court proceedings are begun. This is the same jurisdiction provision as for mixed sex relationships.</p> <p>In addition, for divorce of same sex marriage and dissolution of civil partners, a jurisdiction of last resort is maintained if the parties married or entered their civil partnership in Scotland; no court has, or is recognised as having, jurisdiction and it appears to the Scottish court to be in the interests of justice to assume jurisdiction. This reflects that some countries may not recognise same sex relationships and so some same sex couples seeking to end their relationship may need a jurisdiction of last resort.</p>
Promoting good relations			X	This is not what this SSI is about.

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about.
Advancing equality of opportunity			X	This is not what this SSI is about.
Promoting good race relations			X	This is not what this SSI is about.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	This is not what this SSI is about.
Advancing equality of opportunity			X	This is not what this SSI is about.
Promoting good relations			X	This is not what this SSI is about.

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership¹	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination				Not applicable.

¹ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	As indicated above, leaving the EU may have a negative impact on children's rights in this area, as EU family law has increasingly taken account of children's human rights. As outlined above under "age", the Scottish Government is taking steps to improve how the voice of the child is heard in family cases in Scotland.
Is the policy directly or indirectly discriminatory under the Equality Act 2010?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	Not applicable
If not justified, what mitigating action will be undertaken?	Not applicable

Describing how Equality Impact analysis has shaped the policy making process

Two key points arose.

First, children's human rights may be adversely affected by leaving the EU. As outlined above, the Scottish Government is taking steps to improve how the voice of the child is heard in family cases in Scotland.

Secondly, as indicated above under "sexual orientation", in preparing this SSI the Scottish Government has taken account of its aim of equality of treatment, where possible, between mixed sex and same sex relationships.

Monitoring and Review

If the UK leaves the EU without a deal, the Scottish Government will closely monitor the impact, including the impact on the courts, on family cases and on children and young people.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

**Family Law Team
Scottish Government
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